



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Docket No. 22-12
Lezlie McKenzie, N.P.
Decision and Order**

On December 10, 2021, a former Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Lezlie McKenzie, N.P. (hereinafter, Respondent) of Missoula, Montana. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration Number MM0938261 (hereinafter, registration or COR). *Id.* It alleged that Respondent "[is] currently without authority to handle controlled substances in Montana, the state in which [she is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that on July 26, 2021, the Montana Board of Nursing entered a Final Order that outlined "conditions [Respondent was] required to meet in order to maintain [her] Montana nursing license." *Id.* The OSC further alleged that on October 26, 2021, the Montana Board of Nursing "indefinitely suspended [Respondent's] Montana nursing licenses for failure to abide by the terms" of the July 26, 2021 Order. *Id.*

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 C.F.R. § 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

By letter dated January 6, 2022, Respondent timely requested a hearing.¹ Request for Hearing, at 1. In her Request for Hearing, Respondent stated that she "wish[es] to not relinquish

¹ The Request for Hearing was filed on January 6, 2022. Order Directing the Filing of Government Evidence Regarding Its Lack of State Authority Allegation and Briefing Schedule dated January 10, 2022, at 1. I find that the Government's service of the OSC was adequate and that the Request for Hearing was timely filed on January 6, 2022.

any rights in regards to this matter and intend[s] to comply fully with any regulations of the DEA.” *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Law Judge John J. Mulrooney II (hereinafter, the Chief ALJ). On January 10, 2022, the Chief ALJ issued an Order Directing the Filing of Government Evidence Regarding Its Lack of State Authority Allegation and Briefing Schedule (hereinafter, Briefing Schedule). On January 24, 2022, the Government timely filed its Submission of Evidence and Motion for Summary Disposition (hereinafter, Government’s Motion). In its Motion, the Government argued that because Respondent lacks authority to handle controlled substances in Montana, the state in which she is registered with the DEA, her DEA registration should be revoked. Government’s Motion, at 2-5. Respondent did not file any answer to the Government’s Motion. Order Granting the Government’s Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated February 8, 2022 (hereinafter, Recommended Decision or RD), at 2.

On February 8, 2022, the Chief ALJ granted the Government’s Motion, finding that “[s]ince the Respondent does not have authority as a practitioner in Montana, and this fact is not challenged by the Respondent, there is no other fact of consequence for this tribunal to decide in order to determine whether or not she is entitled to hold a COR.” RD, at 5. Accordingly, the Chief ALJ recommended that Respondent’s DEA registration be revoked based on Respondent’s lack of state authority to handle controlled substances. *Id.* By letter dated March 7, 2022, the Chief ALJ certified and transmitted the record to me for final Agency action and advised that neither party filed exceptions.

I issue this Decision and Order based on the entire record before me. 21 C.F.R. § 1301.43(e). I make the following findings of fact.

FINDINGS OF FACT

Respondent's DEA Registration

Respondent is the holder of DEA registration MM0938261 at the registered address of 715A Skyla Ct., Missoula, Montana 59801-1480. Government's Motion, Exhibit (hereinafter, GX) D (Declaration of [Diversion Investigator (DI)]), at 1. Pursuant to this DEA registration, Respondent is authorized to prescribe controlled substances in schedules II through V as a mid-level practitioner. GX A (Printout of Respondent's registration information from DEA's Registrant Information Consolidated System). Respondent's registration expires on January 31, 2024. *Id.*

The Status of Respondent's State License

On July 26, 2021, the Montana Board of Nursing (hereinafter, MBN) entered a Final Order regarding Respondent's nursing licenses (hereinafter, MBN Order or Order). GX B. The Order stated that Respondent held licenses in Montana as a registered nurse (hereinafter, RN) and an advanced practice RN (hereinafter, APRN), and that Respondent possessed prescriptive authority under her APRN license. *Id.* at 2. The Order further stated that Respondent had engaged in unprofessional conduct under Montana law, and provided conditions that Respondent was required to meet in order to maintain her state prescribing privileges. *Id.*

According to the DI's declaration, DEA learned on October 26, 2021, that the MBN had indefinitely suspended Respondent's state nursing licenses "for failure to abide by the terms" of the conditions set forth in the July 26, 2021 MBN Order. GX D, at 2. DI represented that Respondent's license remained suspended as of January 13, 2022, and submitted a printout of the Montana Department of Labor and Industry's online licensing verification page confirming the suspension of Respondent's APRN license. *Id.* at 3; GX C

According to online records for Montana, of which I take official notice, Respondent's Montana APRN license is suspended and expired.² Montana Department of Labor and Industry,

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C.

https://ebizws.mt.gov/PUBLICPORTAL/searchform?mylist=licenses&pk_vid=d831a8116efb756d16474448085e834e (last visited date of signature of this Order). Accordingly, I find that Respondent is not currently licensed to dispense controlled substances in schedules II through V in Montana, the state in which she is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner

§ 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

According to the Montana Administrative Code, “[o]nly an APRN granted prescriptive authority by the board may prescribe, procure, administer, and dispense . . . controlled substances pursuant to applicable state and federal laws and within the APRN’s role and population focus.” Mont. Admin. R. 24.159.1461 (2013) (Westlaw, current through Issue 4 of the 2022 Montana Administrative Register). Further, according to the Montana Controlled Substances Act, “dangerous drug[s]”³ in schedules II through IV may only be dispensed with a “prescription by a practitioner.”⁴ Mont. Code Ann. § 50-32-208 (West 2015) (Westlaw, current through the 2021 session of the Montana Legislature). A “practitioner” is defined as a “physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.” Mont. Code Ann. § 50-32-101(24)(a) (West 2013) (Westlaw, current through the 2021 session of the Montana Legislature).

Here, the undisputed evidence in the record is that Respondent is not authorized to dispense controlled substances in schedules II through V in Montana. Thus, because Respondent is not authorized to prescribe controlled substances in schedules II through V in Montana,

³ The state’s criteria for labeling drugs as “dangerous drugs” are similar to the CSA’s criteria for labeling drugs as controlled substances. *See generally id.* at § 50-32-201 through § 50-32-233.

⁴ “[A] dangerous drug included in Schedule V may not be distributed or dispensed other than for a medical purpose.” MONT. CODE ANN. § 50-32-208(3) (West 2015).

Respondent is not eligible to maintain a DEA registration. Accordingly, I will order that Respondent's DEA registration be revoked.

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. MM0938261 issued to Lezlie McKenzie, N.P. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Lezlie McKenzie, N.P., to renew or modify this registration, as well as any other pending application of Lezlie McKenzie, N.P., for additional registration in Montana. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

Anne Milgram,
Administrator.

[FR Doc. 2022-07723 Filed: 4/8/2022 8:45 am; Publication Date: 4/11/2022]